

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

FOSAMAX PRODUCTS LIABILITY LITIGATION

This Document Relates To All Actions

MASTER FILE

1:06-MD-1789 (JFK)

CASE MANAGEMENT ORDER NO. 8
(Plaintiff Profile Forms)

Plaintiffs object to Defendant's Proposed Plaintiff Profile Form ("Proposed PPF").

First, Plaintiffs make a general objection to the length of the Proposed PPF. At 33 pages, the Proposed PPF is in line with other PPFs used in other MDLs. See, e.g., In re Rezulin, (35 pages); In re Diet Drugs, (33 pages). The language of the Proposed PPF is taken largely verbatim from In re Aredia and Zometa (33 pages), another MDL also brought by plaintiffs suffering from osteonecrosis of the jaw ("ONJ") allegedly caused by the use of bisphosphonates. Plaintiffs' general objection to the length of the Proposed PPF is without merit.

Plaintiffs next make specific objections to certain sections and appendices of the Proposed PPF. All of these specific objections are without merit, except:

- (1) In all places where the Proposed PPF requests information dating back 20 years from the time Fosamax was first used, the time period should be changed to 12 years. Defendant

is concerned that the 20-year time period is necessary because "that a plaintiff was afflicted with a disease at any previous point in time could suggest a predisposition to develop ONJ." (Dec. 4, 2006 Letter at 5.) However, other portions of the questionnaire asking about medical history should adequately capture this information.

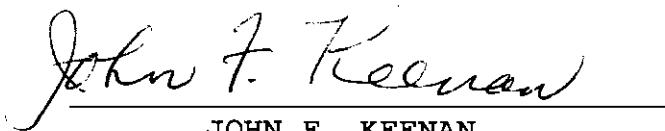
(2) Sections I.(D)(7), II.(N)(3), V.(B)(1) through V.(B)(5), and VIII.(J) should be changed to include a "Don't Recall" response.

(3) For exhibits, such as Exhibit B, authorizing the Department of Veterans Affairs to release medical records, that may not apply to all plaintiffs, the Proposed PPF should include language that triggers their applicability. For example, "if your answer is YES, please execute the attached authorization form Ex. ____."

The Court directs that the Proposed PPF be modified in accordance with this Order. Lead and Liaison Counsel for Plaintiffs and Counsel for Merck are directed to appear before the Court for a status conference on January 29, 2007 at 10am.

SO ORDERED.

Dated: New York, New York
December 18, 2006



JOHN F. KEENAN
UNITED STATES DISTRICT JUDGE